

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

ALLAN A. PETERSEN,

Plaintiff,

v.

**CIVIL ACTION NO. 3:06-CV-114
(BAILEY)**

**ANDURAY E. WHITE, V. FERNANDEZ,
L. LEESON, RODNEY BUCKLEW,
D. YOST, SUSAN S. MCCLINTOCK,
DOMINIC A. GUTIERREZ, SR.,
B. CALLAHAN, C/O KOVSCEK,
R. TRYBUS AND WILLIAM LAYHUE,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on June 18, 2008 [Doc. 89]. In that filing, the magistrate judge recommended that this Court dismiss the plaintiff's Complaint without prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo*

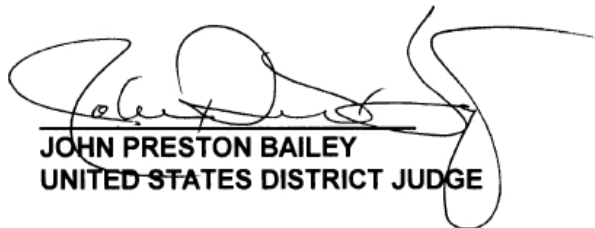
review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within ten (10) days of receipt of the R & R, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket shows that service of the R & R was accepted on June 23, 2008. Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the R & R, it is the opinion of this Court that the Magistrate Judge's Opinion/Report and Recommendation **[Doc. 89]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, the defendant's Motion to Dismiss or For Summary Judgment **[Doc. 79]** is hereby **GRANTED**. Accordingly, the Court hereby **DISMISSES without prejudice** the plaintiff's Complaint **[Doc. 1]** and **ORDERS** it **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to the *pro se* plaintiff.

DATED: July 16, 2008.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE